

September 24, 2018

Via ECFS

Ms. Marlene H. Dortch
Secretary
Federal Communications Commission
445 12th Street, SW
Washington, DC 20554

Re: Public Notice, Consumer and Governmental Affairs Bureau Seeks to Refresh the Record on Advanced Methods to Target and Eliminate Unlawful Robocalls, CG Docket No. 17-59, Advanced Methods to Target and Eliminate Unlawful Robocalls (released Aug. 10, 2018)

Dear Ms. Dortch:

The American Bankers Association¹ (ABA) appreciates the opportunity to comment in response to the request by the Federal Communications Commission (Commission) to “refresh the record” on how the Commission can facilitate the blocking of illegal calls by companies that provide telephone service (Voice Service Providers) before those illegal calls reach American consumers.²

In a Report and Order released in November 2017 (Report and Order), the Commission permitted, but did not require, Voice Service Providers to block limited categories of automated calls in an attempt to limit consumers’ receipt of unlawful “spoofed” calls.³ Under the Truth in Caller ID Act, a call is unlawfully spoofed if the caller causes the caller-ID message on the call recipient’s phone to display a phone number different from that of the telephone number from which the call was placed, if done with “the intent to defraud, cause harm, or wrongly obtain anything of value.”⁴ Specifically, the Report and Order permits Providers to block calls at the request of the subscriber of the number and calls that purport to originate from a number that

¹ The American Bankers Association is the voice of the nation’s \$17 trillion banking industry, which is composed of small, regional, and large banks that together employ more than 2 million people, safeguard \$13 trillion in deposits, and extend more than \$9 trillion in loans.

² Public Notice, Consumer and Governmental Affairs Bureau Seeks to Refresh the Record on Advanced Methods to Target and Eliminate Unlawful Robocalls, CG Docket No. 17-59, Advanced Methods to Target and Eliminate Unlawful Robocalls (released Aug. 10, 2018) [hereinafter, *Public Notice*].

³ Report and Order and Further Notice of Proposed Rulemaking, Advanced Methods to Target and Eliminate Unlawful Robocalls, CG Docket No. 17-59 (released Nov. 17, 2017) [hereinafter, *Report and Order*].

⁴ Truth in Caller ID Act of 2009 § 2, 47 U.S.C. § 227(e)(1).

appears to be invalid, has not been allocated to any Provider, or is unassigned to any user.⁵ The Commission now seeks comment on potential “additional criteria” that Voice Service Providers could use to identify and block illegal calls.⁶

I. Summary of Comment

ABA has long supported the Commission’s efforts to eliminate illegal automated calls. We appreciate that, in the Report and Order, the Commission authorized the blocking of calls by Voice Service Providers only under “well-defined circumstances” that suggest that the blocked calls are “highly likely to be illegitimate.”⁷ The Commission’s authorization of call blocking under these circumstances—where the call appears to originate from an invalid or unassigned number—demonstrates that the Commission can take action to address illegal automated calls while minimizing the risk that legitimate calls will be blocked.

Since the Commission released the Report and Order last November, ABA members have continued to report that phone numbers used to place outbound calls may be incorrectly “labeled” as “possible fraud,” “scam,” or “debt collector” in the caller-ID message displayed on the call recipient’s phone. Under these circumstances, the call may be blocked either by the customer’s Voice Service Provider or by a third-party call labeling service, such as a service whose mobile application can be downloaded to the customer’s cell phone.

Customers receive important time-critical, non-telemarketing communications from their banks using automated voice calls and text messages. The incorrect labeling of a bank’s phone number and the blocking of calls from that number harm the customer to whom the call was placed: that customer may be prevented from receiving important information such as communication concerning suspicious activity on the customer’s account, data security breaches, low account balances, payment reminders, or delinquent accounts. It is critical that such calls be completed without delay.

In the Report and Order, the Commission provided Voice Service Providers with authority to block, on the Provider’s initiative, calls from invalid or unassigned numbers. We urge the Commission to exercise care and caution in providing Voice Service Providers with additional authority, being sensitive to address the significant risk that lawful calls may be inadvertently blocked.⁸ The Commission should not permit other criteria to form the basis for call-blocking

⁵ *Report and Order* ¶ 18.

⁶ *Public Notice* at 1.

⁷ *Report and Order* ¶ 9.

⁸ The Commission has acknowledged that legitimate, beneficial calls may be blocked. *See Public Notice* at 3 (seeking comment on “how to reduce the potential for false positives—blocking lawful calls thought to be illegal—and how to address situations in which false positives occur”); Proposed Rule, Advanced Methods to Target and Eliminate Unlawful Robocalls, 82 Fed. Reg.

unless those criteria allow a Provider to verify, with a high degree of certainty, that the caller is spoofing illegally the number from which the call purports to originate.

We also urge the Commission to take steps to prevent lawful calls from being incorrectly labeled and blocked. The Commission should require Voice Service Providers and third-party call labeling services to consult a “white list” of numbers assigned to legitimate callers prior to assigning to the number a derogatory label such as “possible fraud,” “scam,” or “debt collector,” or blocking the call. The Commission also should ensure that callers are notified when a number that is used to make outbound calls is labeled in a derogatory manner and/or calls originating from that number (or calls lawfully using that number) are blocked. In addition, because the granting of additional call blocking authority to Providers will not solve completely the problem of illegally spoofed calls, we urge the Commission to continue its work to identify the originating phone number of illegally spoofed calls and to initiate enforcement actions against the parties placing those calls.

II. Discussion

A. The Commission Should Not Permit Voice Service Providers to Block Additional Categories of Calls on the Provider’s Initiative Unless the Provider’s Use of that New Authority Would Result Only in the Blocking of Illegal Calls

In the Report and Order, the Commission provided Voice Service Providers with authority to block calls from invalid or unassigned numbers, in an attempt to limit consumers’ receipt of unlawful spoofed calls. However, several ABA members who engage in lawful calls⁹ report that their calls are being incorrectly labeled as “possible fraud,” “scam,” “debt collector,” or similar label, either by the customer’s Voice Service Provider or by a third-party call labeling service. When a call is incorrectly labeled, the customer is discouraged from answering the phone and may decide to block the call (and subsequent calls from the same number) based on the erroneous label. Thus, the incorrect labeling of a call can be tantamount to the blocking of that call. In other instances, the customer’s Voice Service Provider may impose the blocking directly, based on an incorrect understanding of the origin of the call.

22,625, 22,630 (May 17, 2017) (“The Commission seeks to avoid the blocking of such legitimate calls and, instead, seek[s] to ensure that legitimate calls are completed.”).

⁹ As described more fully in ABA’s comment letter of June 30, 2017, to the Report and Order as initially proposed, banks often project an 800 number or local phone number onto the recipient’s Caller ID when making an outbound call. This legal practice allows the customer to return the bank’s call free of charge and ensures that any return call by the customer is routed to bank staff that are best able to respond to the customer’s needs. Letter from Jonathan Thessin, Am. Bankers Ass’n, to Marlene H. Dortch, Fed. Comm’n Comm’n 2 (June 30, 2017), <http://www.aba.com/Advocacy/commentletters/Documents/cl-FCC-Robocalls2017.pdf> [hereinafter, ABA 2017 Letter].

For example, one large bank reported that it recently conducted a pilot project in which it tested the status with Voice Service Providers of 29 of the bank's phone numbers used for outbound calls. For each of the 29 numbers, at least one Provider had assigned a derogatory label to the number. In addition, as we recounted in ABA's August 17, 2018, letter, another large bank reported that a phone number from which the bank places legally appropriate calls to 60,000 customers per month has been labeled as "scam or fraud" by a popular third-party service.¹⁰ The bank asked an external vendor to review how Voice Service Providers label nine phone numbers from which the bank makes outbound calls. The vendor's research revealed that eight of those nine phone numbers are labeled as "spam likely," "suspected spam," or "spam number" by at least one of the four largest Providers, possibly because of the large volume of calls the bank places from each number. Other ABA members also report that they have determined that their outbound calling numbers are being labeled in a similarly derogatory manner.

Because available evidence suggests that legitimate calls are today being incorrectly labeled and blocked under the call-blocking authority granted to Providers in the Report and Order, the Commission should exercise caution in granting Providers additional authority to block calls. We urge the Commission not to permit other criteria to form the basis for additional call-blocking authority *unless* it is established that those criteria allow Providers to verify, with a high degree of certainty, that the caller is illegally spoofing the number from which the call purports to originate.

Moreover, the Commission should not place Voice Service Providers in a position where a Provider may exercise judgment on its own of a call's legality under the Telephone Consumer Protection Act¹¹ (TCPA) or other law. As we noted in ABA's June 30, 2017, comment letter, the Commission has historically prohibited call blocking, because the practice is inconsistent with a Voice Service Provider's statutorily defined status as a public utility that is required to connect calls—not to impose its own judgment on the legality of the calls its customers seek to make.¹² The Commission should not deviate from that approach and permit Providers to make such a subjective determination of a call's legality. Providers are ill-equipped to make such a judgment, which may turn on a complex application of the law to the facts surrounding the call at issue.

¹⁰ Letter from Jonathan Thessin, Am. Bankers Ass'n, to Marlene H. Dortch, Fed. Commc'ns Comm'n 3 (Aug. 17, 2018), <https://www.aba.com/Advocacy/commentletters/Documents/cl-TCPA20180817.pdf>.

¹¹ Telephone Consumer Protection Act of 1991, 47 U.S.C. § 227 *et seq.* (2012).

¹² See ABA 2017 Letter, *supra* note 9, at 6; *see also* Communications Act of 1934, 47 U.S.C. § 202, 48 Stat. 1064 (prohibiting Voice Service Providers from discriminating in their provision of services to consumers); Proposed Rule, Advanced Methods to Target and Eliminate Unlawful Robocalls, 82 Fed. Reg. at 22,626 (referencing the "Commission's historic prohibitions on call blocking"); *Anderson v. New York Telephone Co.*, 361 N.Y.S.2d 913, 915-16 (N.Y. 1974) ("The telephone company is a public utility which is bound to make its equipment available to the public for any legal use to which it can be put . . .").

B. Lawful Calls Must Be Protected to Ensure Bank Customers Receive Important, Beneficial, and Time-Critical Calls

The incorrect labeling of a bank’s outbound calling number as “possible fraud,” “scam,” or “debt collector”—and the subsequent blocking of calls from that number by the customer’s Voice Service Provider or third-party call labeling service—can cause significant harm by impairing the customer’s ability to receive important, beneficial, and time-sensitive calls from its bank. It is imperative that such incorrect labeling and blocking be prevented and, when it occurs, corrected quickly.

a. The Commission Should Require Entities that Label Phone Numbers or Block Calls to Consult with a “White List” of Legitimate Callers

To prevent the blocking of lawful bank calls, ABA continues to support the Commission’s earlier suggestion¹³ that the Commission or a third party create a single list of phone numbers provided by legitimate businesses that should not be labeled in a derogatory manner or blocked (a White List).¹⁴ An entity that engages in the labeling of numbers and/or blocking of calls should consult with the White List prior to placing a label on a number or a block on a call. The entity should refrain from placing a derogatory label on a number present on the White List or block calls from that number. Both Voice Service Providers and third-party call labeling services should have access to, and use, the White List.

b. The Commission Should Ensure that Callers Are Notified When their Phone Numbers Are Labeled in a Derogatory Manner and/or Calls from those Numbers Blocked

When a number is incorrectly labeled and/or calls from that number blocked, no notification is provided to the caller. Consequently, as Commissioner O’Rielly has recognized, “it can be difficult and time consuming [for callers] to dispute and remove inappropriate blocks.”¹⁵ A key challenge facing banks and other legitimate businesses is determining which entity is performing the labeling and blocking (whether a Voice Service Provider or third-party call-labeling service) and why the business’ numbers are being incorrectly labeled and calls blocked.

To address this problem, the Commission should ensure that a caller whose phone number is labeled in a derogatory manner—by either a Voice Service Provider or third-party service—is

¹³ Proposed Rule, Advanced Methods to Target and Eliminate Unlawful Robocalls, 82 Fed. Reg. at 22,630.

¹⁴ See Letter from Jonathan Thessin, Am. Bankers Ass’n, to Marlene H. Dortch, Fed. Comm’n 2 (Feb. 2, 2018), <https://www.aba.com/Advocacy/commentletters/Documents/cl-TCPA20180202.pdf> (expressing support for creation of a single White List) [hereinafter, ABA February 2018 Letter]; ABA 2017 Letter, *supra* note 9, at 6 (same).

¹⁵ *Report and Order* (statement of Michael O’Rielly, Comm’r).

advised of the label and provided an opportunity to correct it. In addition, ABA continues to support the creation of a “challenge mechanism” for banks and other callers, whose lawful calls are blocked in error, to report the blocking and regain prompt access to the number.¹⁶ Use of the challenge mechanism should also be available to a business whose outbound calling numbers are incorrectly labeled.

ABA members whose phone numbers have been incorrectly labeled (and calls from those numbers blocked) report that the bank learned of the labeling and blocking largely by chance, either from conversations between bank personnel and customers who did not receive the bank’s calls or from the bank’s research, conducted on its own initiative, into how its outbound calling numbers are labeled. ABA members that have contacted a Voice Service Provider in an attempt to determine the source of the blocking have largely been unsuccessful in resolving the blocking. These banks’ experiences underscore the need for Providers and third-party call labeling services to provide notification immediately when they provide a derogatory label to a phone number or block a call.

C. The Commission Should Continue Its Important Work to Identify the Originating Phone Number of Illegal Spoofed Calls and the Bad Actors Who Illegally Place those Calls

Despite the laudable intent behind the Commission’s efforts to facilitate Providers’ blocking of illegally spoofed calls, the grant of additional call-blocking authority to Providers will not solve completely the problem posed by these calls. As we discussed in ABA’s June 30, 2017, comment letter, if a Voice Service Provider blocks all calls from a particular number, the entity illegally spoofing that number can simply spoof a different number.¹⁷ As Providers block calls that illegally spoof invalid or unassigned numbers (using the authority granted to Providers in the Report and Order), bad actors are increasingly likely to spoof *valid* numbers that have been assigned to banks and others. As we recounted in our 2017 letter, one ABA member reported evidence that a bad actor illegally spoofed the bank’s number: the bank’s customer commenced litigation against the bank based on the customer’s alleged receipt of a call displaying the bank’s phone number but which the bank has no record of placing to the customer.¹⁸

The ease with which bad actors can illegally spoof phone numbers underscores the need to identify the originating phone number of illegally spoofed calls and the bad actor placing those calls, and to stop more illegal calls before they are placed. We continue to support the Commission’s ongoing work to identify and stop these bad actors.

¹⁶ See ABA February 2018 Letter, *supra* note 14, at 2; ABA 2017 Letter, *supra* note 9, at 4-6.

¹⁷ ABA 2017 Letter, *supra* note 9, at 7.

¹⁸ *Id.*

III. Conclusion

ABA continues to support the Commission's efforts to address the problems posed by illegally spoofed calls. In connection with the need to serve our customers, we urge the Commission to continue to exercise care and caution and not provide additional call-blocking authority to Voice Service Providers unless it is established that use of that new authority would result only in the blocking of illegally spoofed calls. We also urge the Commission to protect lawful calls by requiring Providers and third-party call-labeling services to consult with a White List of legitimate callers prior to placing a derogatory label on an outbound calling number and/or blocking a call from that number. We also urge the Commission to require Providers and third-party services to notify a caller when its phone number is labeled in a derogatory manner and/or when calls from that number are blocked. Because the grant of additional call-blocking authority to Providers will not solve completely the problem posed by illegal calls, we urge the Commission to continue to facilitate efforts to identify the originating phone numbers of illegally spoofed calls and stop the bad actors placing those calls.

Sincerely,

A handwritten signature in black ink, reading "Jonathan Thessin". The signature is written in a cursive style with a large, looped initial "J".

Jonathan Thessin
Senior Counsel, Center for Regulatory Compliance